

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660

FAX: (650) 589-5062

agraf@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201

FAX: (916) 444-6209

DANIEL L. CARDOZO
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL

MARC D. JOSEPH
Of Counsel

*Not admitted in California.
Licensed in Colorado.

June 1, 2021

VIA E-Mail Only

Caroline Thomas Jacobs
Director, Wildfire Safety Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Email: wildfiresafetydivision@cpuc.ca.gov

Re: **Comments of the Coalition of California Utility Employees on the
Wildfire Safety Division's Proposed Changes to the 2021 Safety
Certification Guidance Pursuant to Public Utilities Code § 8389(f)(2)**

Dear Director Thomas Jacobs:

We write on behalf of the Coalition of California Utility Employees (CUE) to provide comments on the Wildfire Safety Division's (Division) proposed changes to the 2021 Safety Certification Guidance.¹

I. INTRODUCTION

CUE is a coalition of labor unions whose approximately 43,000 members work at nearly all the California utilities, both publicly and privately owned. CUE's coalition union members make up the on-the-ground workforces of the three large electrical corporations that implement electric operations and maintenance policies and practices, including, for example, service restoration following a power safety power shutoff event. CUE's coalition union members are directly impacted by

¹ Letter from Caroline Thomas Jacobs, Director, Wildfire Safety Division re: Wildfire Safety Division's Proposed Changes to the 2021 Safety Certification Guidance Pursuant to Public Utilities Code § 8389(f)(2) (May 11, 2021) (hereinafter "Proposed 2021 Safety Certification Guidance").
1011-1765acp

implementation of the IOUs' wildfire mitigation plans (WMPs). CUE has participated in proceedings before the California Public Utilities Commission for more than 25 years, including as a party to the Order Instituting Rulemaking to Implement Electric Utility Wildfire Mitigation Plans Pursuant to Senate Bill 901 (2018), R. 18-10-007 and other related proceedings.

CUE's comments focus on the Division's proposed criteria for determining whether an electrical corporation is in "good standing" to receive a safety certification. Specifically, the Division's proposal to add criteria beyond an electrical corporation's commitment to implement the findings of its most recent safety culture assessment (SCA) conflicts with Assembly Bill (AB) 1054's plain language.

II. THE DIVISION'S INTERPRETATION OF THE "GOOD STANDING" REQUIREMENT CONFLICTS WITH AB 1054'S PLAIN LANGUAGE

AB 1054 established a Wildfire Fund that allows participating electrical corporations to seek payments for eligible third-party catastrophic wildfire liability claims that have been settled or finally adjudicated. An electrical corporation can only access the Wildfire Fund if it has a valid safety certification on the date of the ignition. The Division is responsible for issuing safety certifications to electrical corporations, based on the electrical corporation's demonstration that it satisfied the requirements enumerated in Public Utilities Code § 8389(e).

Section 8389(e)(2) requires an electrical corporation to demonstrate that it is in "good standing." AB 1054 expressly states that an electrical corporation can satisfy the "good standing" requirement by "having agreed to implement the findings of its most recent safety culture assessment, if applicable."²

Section 8389(d)(4) mandated that the Commission approve a process for the Division to conduct annual SCAs for each electrical corporation no later than December 1, 2020. On November 19, 2020, the Commission approved the SCA process, which the Division commenced in March 2021 and expects to complete the SCAs by the end of August 2021.³ Because an electrical corporation can agree to implement the findings of its most recent SCA before it submits the 2021 safety

² Pub. Utilities Code § 8389(e)(2).

³ Proposed 2021 Safety Certification Guidance at p. 5.
1011-1765acp

certification request,⁴ this standard is applicable. In fact, the Division acknowledges that the Section 8389(e)(2) requirement can be fulfilled in this manner.⁵

In addition to agreeing to implement the most recent SCA, the Division proposes “other criteria” for determining whether an electrical corporation is in “good standing.”⁶ The Division will consider the findings of any other SCAs, such as the Commission’s 5-year SCA required by Section 8386.2, and the extent to which an electrical corporation is implementing the associated recommendations.⁷ It also proposes to consider vague “additional criteria.”⁸ The Division’s latter proposal suffers two critical defects.

First, the Division’s utilization of “additional criteria” beyond SCAs would conflict with AB 1054’s plain language. Section 8389(e)(2) clearly identifies how an electrical corporation can satisfy the “good standing” requirement. That is, if an electrical corporation provides documentation showing it agreed to implement the findings of its most recent SCA, then the Division must find it is in good standing. Therefore, the Division’s conclusion that it could find that an electrical corporation is not in good standing even when the corporation has agreed to implement the Division’s findings associated with its most recent SCA is erroneous.

Second, the Division fails to clearly articulate the “additional criteria” it would utilize to make a “good standing” determination. The Division provides two examples of factors it may consider,⁹ but it does not limit its consideration to these two instances, nor does it explain what, if any, other information it would use to determine if an electrical corporation is in good standing. By not establishing clear standards upfront, the Division is creating a moving target that will be difficult for electrical corporations to satisfy even when it is taking reasonable steps to improve and prioritize safety.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

1011-1765acp

June 1, 2021
Page 4

Because the proposed “additional criteria” are vague and conflicts with the plain language of AB 1054, the Division should remove this proposal from the 2021 Safety Certification Guidance.

III. CONCLUSION

When determining whether an electrical corporation is in good standing, the Division need not look further than documentation showing that the electrical corporation has agreed to implement the findings of its most recent SCA. Anything more would conflict with an explicit statutory standard.

Thank you for your consideration of these comments.

Sincerely,



Andrew J. Graf

AJG:acp

Cc: R.18-10-007 Service List

1011-1765acp